



David Selden Pty Ltd
Suite 306A, 19A Boundary Street
RUSHCUTTERS BAY NSW 2011

D141/21
TH2 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 141/21/7 - APPROVAL**

Development Consent Number:	141/21/7
Land to which this applies:	34 Phillips Street, Neutral Bay Lot No.: 1, DP: 708780
Applicant:	David Selden Pty Ltd
Proposal:	Section 4.55(1A) to modify development consent DA 141/21 for the demolition of an existing dwelling house and garage and construction of a two-storey dwelling house and associated landscaping

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **141/21** and registered in Council's records as Application No. **141/21/7** relating to the land described as **34 Phillips Street, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **1 September 2021**, has been determined in the following manner:

A. Add Condition A8 and C32 as follows:

Development in Accordance with Plans (s4.55 Amendments)

A8. The development being carried out in accordance with plans identified in Condition A1 of the consent and A4, A5 and A6 of the modification to consent endorsed with Council's approval stamp, except as modified by the modifications shown on:

Plan No.	Rev	Title	Drawn by	Received
455.02	C	Roof Plan	David Selden Design	12/02/2024
455.03	C	First Floor Plan	David Selden Design	12/02/2024
455.04	C	Ground Floor Plan	David Selden Design	12/02/2024
455.06	C	Street/ Southern Elevation	David Selden Design	12/02/2024
455.07	C	Western Elevation	David Selden Design	12/02/2024
455.08	C	Northern Elevation	David Selden Design	12/02/2024
455.09	C	Eastern Elevation	David Selden Design	12/02/2024
Rooftop Garden Maintenance Plan (Revised)	-	Rooftop Garden Maintenance Plan	David Selden Design	12/02/2024

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Infrastructure)

Photovoltaic Panels

- C32. The additional photovoltaic panels approved under Modification Application No. DA141/21/7 must not exceed the building parapet height of RL 62.25.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, in order to fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

B. Modify Condition C28 as follows:

Amendments to the Landscape Plan

- C28. The landscape plan (L102 Rev I) must be amended as follows to provide an appropriate landscape setting:

- The front southwestern garden is to have a maximum RL of 55.40 as stipulated in the Ground Floor Plan (455.04 Rev B). No modification or alteration to existing soil levels within the Tree Protection Zone of the *Jacaranda mimosifolia* shall occur.
- The existing front boundary stone wall subject to an increase in height shall be extended without excavation and/or earthworks within the TPZ of the *Jacaranda mimosifolia*. If excavation or earthworks are required within the TPZ of the *Jacaranda mimosifolia* sensitive construction techniques including hand excavation is required under supervision of a project arborist and no roots greater than 40mm shall be cut.
- The landscape plan must be amended noting the amendments to the roof planting approved under Modification Application No. 141/21/7.

An amended landscape plan complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

Reasons for Approval:

The proposed modifications sought under Development Consent No. 141/21/7 are generally supportable, including roof landscaping, the alternative means of access, amendments to fencing and skylights.

The roof access via two removable ladders secured to the southern façade and deletion of the previously sought indentations to the eastern elevation is supported providing a temporary method of access not impinging on any privacy to adjoining properties. An updated rooftop garden maintenance plan is provided detailing the methodology for access to the roof. The updated rooftop garden maintenance plan satisfies the requirements of Condition C29 'Roof top garden maintenance plan.'

The previously approved metal fence providing separation between the driveway and footpath is to be replaced with a sandstone wall. The sandstone wall will have a matching height as the metal fence and is a supportable material utilising existing sandstone from the demolition of the existing dwelling. The change in materiality of the fence will not have an adverse dominant impact on the street or affect the previously approved landscaping within the front setback therefore generally satisfies Objectives and Provisions in s1.4.14 of NSDCP 2013.

The proposed amendment to the flat roof retains roof planting to the front and sides of the roof visible from Phillips Street which is an acceptable outcome and an improvement compared to that proposed under the previous Modification Application No. 141/21/5 establishing sufficient planting to contribute to the aesthetics of the building and streetscape.

A condition of consent will ensure the additional solar panels consented under this modification application do not exceed the parapet height.

Having regard to the provisions of section 4.55 and 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for approval.

How community views were taken into account:

The proposal subject to the amended roof planting, method of access to the roof and height of additional solar panels subject to condition is considered to be in the public interest for the reasons stated throughout the assessment report.

The conditions attached to the original consent for Development Application No. 141/21 by endorsed date of **1 September 2021** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr Thomas Holman**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
 - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
 - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

Endorsed for and on behalf of North Sydney Council

19 April 2024

DATE

Thomas Holman

Signature on behalf of consent authority
THOMAS HOLMAN
SENIOR ASSESSMENT OFFICER